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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996	)	CC Docket No. 96-187

COMMENTS OF WORLDCOM

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files its comments in response to the petitions for reconsideration filed by AT&T Corp. ("AT&T"), MCI Telecommunications Corp. ("MCI"), and Southwestern Bell Telephone Company ("SWBT") on March 10, 1997 regarding the Commission's Report and Order ("Order"), FCC 97-23, released on January 31, 1997 in the above-referenced proceeding.

I. INTRODUCTION AND SUMMARY

Section 402(b)(1)(A) of the Telecommunications Act of 1996 states that local exchange carrier ("LEC") tariffs filed on a streamlined basis "shall be deemed lawful."[1] In its Notice of Proposed Rulemaking in this proceeding, the Commission stated that there were at least two possible interpretations of the "deemed lawful" language that would have different legal and practical effects on the streamlined LEC tariffs. One interpretation is that a tariff that becomes effective without Commission suspension and investigation automatically becomes a lawful tariff. Under this view, even if later rate prescription or complaint actions found the tariff ultimately to be unlawful, the Commission could not award refunds or damages for the

[1] 47 U.S.C. § 402(b)(1)(A) (1996).

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period the tariff was in effect, but only on a prospective basis. The second interpretation would presume the tariff to be lawful, but allow parties to challenge that presumption and recover refunds or damages for any time that the unlawful tariff was in effect.[2]

MFS Communications filed initial and reply comments in this proceeding supporting adoption of the second interpretation of the "deemed lawful" language.[3] MFS pointed out that "deemed lawful" means only "presumed lawful," and that adoption of the Commission's first interpretation would create the perverse result of permitting LECs to set rates at any level, and avoid any consequential damages or refunds up to the very moment that the Commission later concludes that the tariff filing is unlawful.[4]

Contrary to the views of MFS and others, the Commission's Order adopted the first interpretation of "deemed lawful." The Commission readily acknowledged that its interpretation, by preventing consumers and carriers from recovering overcharges and damages for unlawful tariffs, "would differ radically from the current practice" and "will change significantly the legal consequences of allowing tariffs filed under this provision to become effective without suspension."[5] Nonetheless, the Commission concluded that, based on its

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[2] Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-187, issued September 6, 1996, at paras. 8-15 ("NPRM").

[3] See Comments of MFS Communications Company, Inc., CC Docket No. 96-187, filed October 9, 1996, at 7-8 ("MFS Comments"); Reply Comments of MFS Communications Company, Inc., CC Docket No. 96-187, filed October 24, 1996, at 3-5 ("MFS Reply Comments"). On December 31, 1996, MFS Communications, Inc. merged with WorldCom. The combined company operates under the WorldCom name.

[4] MFS Comments at 7-8; MFS Reply Comments at 3-5.

[5] Order at paras. 8, 20.

interpretation of the language of the statute, "this is the balance between consumers and carriers that Congress struck when it required eligible streamlined tariffs to be deemed lawful."[6]

On March 10, AT&T and MCI filed petitions for reconsideration of the Commission's Order. AT&T and MCI both argue that the Commission has adopted an unreasonable and impermissible reading of the phrase "deemed lawful" in Section 402(b)(1)(A).[7]

II. WORLDCOM AGREES WITH AT&T AND MCI THAT THE COMMISSION'S ORDER ADOPTS AN UNREASONABLE DEFINITION OF "DEEMED LAWFUL"

WorldCom strongly agrees with AT&T and MCI that the Commission has concocted an erroneous interpretation of the phrase "deemed lawful." In its comments in this proceeding, MFS showed how defining "deemed lawful" as a rebuttable presumption of lawfulness comports best with the statute and longstanding Commission policies.[8] However, the Commission fails to consider this and other highly pertinent record evidence in its Order. By ruling that the phrase "deemed lawful" unambiguously means a conclusive presumption of lawfulness, the Commission "saw no reason" to look to any other evidence that might contradict its conclusion.[9] The Commission is wrong, both on its ultimate choice of definition and its decision to ignore evidence to the contrary.

Both AT&T and MCI explain in their petitions that the word "deemed" is susceptible to at least two different dictionary meanings: a rebuttable presumption, and a

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[6] Order at para. 20.

[7] AT&T Petition at 1-10; MCI Petition at 1-15.

[8] MFS Comments at 7-8; MFS Reply Comments at 3-5.

[9] Order at para. 19.

conclusive presumption.[10] Indeed, the Commission itself admitted in the NPRM that there are "at least two possible interpretations" that would alter the current regulatory treatment of LEC tariff filings, and expressly solicited comments on "other possible interpretations" of the statutory language.[11] Thus, the Commission is plainly wrong when it finds in the Order that its interpretation is the only "unambiguous" way to view the "deemed lawful" phrase.[12]

The Commission's reliance on judicial precedent to bolster its conclusion is altogether unconvincing. The Order cites only two appellate decisions concerning the Federal Energy Regulatory Commission ("FERC") in support of an interpretation of "deemed lawful" as a conclusive presumption of lawfulness.[13] Yet both of these cases reach only the application of procedural rules (not statutory language), by a non-FCC agency. This rather meager legal precedent is certainly not sufficient to constitute an explicit and unambiguous mandate from Congress, as the Commission apparently believes. In contrast, AT&T lists at least nine separate court cases holding that "deemed lawful" only creates a rebuttable presumption.[14] At the very least, the Commission cannot ignore these other disparate readings of the statutory language.

Although WorldCom believes that "deemed lawful" means no more than a rebuttable presumption of lawfulness, WorldCom agrees with AT&T and MCI that, solely for purposes of reconsidering the Commission's Order, there is considerable ambiguity concerning

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[10] AT&T Petition at 2; MCI Petition at 4.

[11] NPRM at paras. 8, 15.

[12] Order at paras. 18-19.

[13] Order at para. 19 n.60, n.61.

[14] AT&T Petition at 6-7.

whether Section 402(b)(1)(A) establishes a rebuttable presumption or a conclusive presumption. Given this circumstance, the Commission is required to look at other pertinent evidence -- including (1) congressional intent, (2) the history, structure, and purpose of tariffing requirements under the Communications Act, and (3) public policy -- to give the correct meaning to the statutory language.[15] Even a cursory examination of this evidence makes it clear that the Commission's conclusion is not well founded.

The complete lack of legislative history on Section 402(b)(1)(A) cuts directly against the Commission's extreme interpretation. Given the longstanding statutory mandate of awarding customers damages and refunds for a carrier's unlawful rates, AT&T is surely correct when it observes that the Commission somehow has found that "a two-word phrase for which there is no meaningful legislative history indicates Congress' intent to cut a swath through legal doctrines that have stood for more than a century."[16] Title II of the Communications Act of 1934, as amended, governs how carriers provide services to their customers. In particular, Section 206 of the Act recognizes that carriers are liable to their customers for actual damages, plus attorney's fees, for violating the Act. Section 207 authorizes the recovery of damages via FCC complaint or court action. Section 208 governs the FCC complaint process, and the award of reparations for injury, while Section 209 allows the complainant to recover damages from the carrier. It is simply not credible to assert that Congress intended to eviscerate much of the content of these provisions -- a result the Commission found will "differ radically" from current

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[15] AT&T Petition at 7-10; MCI Petition at 6-14.

[16] AT&T Petition at 8.

law[17] -- without offering any hint or suggestion of such legislative intent.

Further, the other terms of Section 402 itself lend credence to the more limited reach of the "deemed lawful" language. For example, Section 402(b)(1) is formally entitled "streamlined procedures," not, as the Commission would have it, "elimination of customers' damages remedies." This can only mean that the statutory language that follows involves a lessening or reduction of certain procedural rules governing LEC tariff filings; it does not mean an outright elimination of a substantive legal liability for damages or refunds. Moreover, Section 402 nowhere references the damages remedies of Sections 205, 206, 207, or 208 of the 1934 Act (as mentioned above), which the Commission insists have been significantly altered by the "deemed lawful" language. Again, WorldCom believes it is highly unlikely that Congress would intend such a monumental overhaul of key Title II remedies without any mention of those affected provisions in the statute itself.

In addition to the historical and statutory context, there are obvious serious policy flaws attending the Commission's erroneous reading of Section 402. In the words of AT&T, the Commission would have us believe that Congress "grants this unprecedented exemption from settled tariffing law to the sole remaining monopolists in the nation's telecommunications markets," while retaining liability for damages awards and overcharges to competitive CLECs and IXCs.[18] It is completely irrational for the Commission, absent any evidence whatsoever, to find that Congress decided to subject LEC monopoly rates to much less stringent remedial provisions than competitive service providers' rates. To take this dramatic step in only two

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[17] Order at para. 8.

[18] AT&T Petition at 9; see also MCI Petition at 12-13.

words is all the more unlikely. Further, it is patently absurd to conclude that Congress intended to allow the LECs to charge their customers unjust and unreasonable rates without allowing any monetary recourse. The last time WorldCom checked, Section 201(b) still requires carriers to charge only just and reasonable rates, and declares unjust and unreasonable rates to be unlawful.[19] The Commission's interpretation of Section 402 guarantees that LECs could unlawfully charge their customers unjust and unreasonable rates, and leave those customers unable to actually enforce the dictates of Section 201 against the LECs. Indeed, by relieving the LECs of their statutory obligation to file lawful tariffs, the Commission has handed the LECs the perverse incentive to file, and derive instant profit from, egregiously unlawful tariffs.

Finally, contrary to the deregulatory and pro-consumer goals of the 1996 Act, the Commission's decision will create a significant new regulatory barrier, one that prevents LEC customers from recovering damages and overcharges from unlawful LEC rates. Further, it is likely that the LECs will file an increased number of blatantly unlawful tariffs, requiring affected parties (where possible) to file an increasing number of oppositions and complaints in response. The result will be far more regulatory proceedings and paperwork for parties and the Commission to endure, an outcome that is inconsistent with the deregulatory intent of the Act.

Certainly, whether or not the Commission rectifies its unsupported interpretation of "deemed lawful," it must reject Southwestern Bell's even more egregious reading of the statute. Southwestern Bell makes the incredible claim that "deemed lawful" means that no Section 208 complaint can ever be filed against any streamlined tariff.[20] Not satisfied with

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[19] 47 U.S.C. § 201(b).

[20] SWBT Petition at 1.

preventing its customers from recovering damages and refunds for unlawful overcharges, SWBT now wants to prohibit its customers from challenging its rates at all, and thereby allow LECs to act with impunity by providing them "a 'safe harbor' in which they can operate without fear of post-effective attack upon their rates or tariffs."[21] WorldCom submits that it is not this Commission's role to provide any carrier with a "safe harbor" from the legitimate, statutorily-recognized grievances of its customers. Such brazen, protectionist uses of regulatory authority should be rejected out of hand as the remnants of monopoly thinking.

III. THE COMMISSION SHOULD RECONSIDER OR CLARIFY SEVERAL OTHER ASPECTS OF ITS DECISION

WorldCom also agrees with AT&T and MCI on several other points. First, MCI is correct that Section 402(b)(1)(A) of the Act only applies to LECs to the extent they are providing exchange access services.[22] Nowhere does the provision even suggest that LECs have authority to file tariffs for interstate interexchange services, or any other type of service, on a streamlined basis. Second, WorldCom supports AT&T's view that the three calendar days granted for parties to file oppositions to LEC streamlined tariff filings must include at least two business days.[23] The Order fails to take account of certain situations (such as Friday tariff filings requiring oppositions the following Monday) that would not give parties adequate time to identify, obtain, and review LEC tariff filings, and then draft and file responses.[24]

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[21] SWBT Petition at 3.

[22] MCI Petition at 19-21.

[23] AT&T Petition at 10-12.

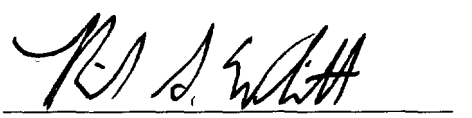
[24] See Order at para. 78.

Third, AT&T is correct that rate of return LECs, as well as price cap LECs, should file their tariff review plans ("TRPs") at least 90 days prior to their annual access filings.[25] The Order gives no rationale for allowing rate of return LECs to file TRPs no more than 15 days before their tariffs take effect. Finally, AT&T and MCI ask the Commission to require those LECs seeking to submit mid-term changes to their price cap indices ("PCIs") to file TRPs at least 30 days in advance.[26] WorldCom agrees. Because the Order did not address this situation, the Commission should adopt the proposal advanced by AT&T and MCI so that all parties have sufficient time to review the LECs' price cap materials.

IV. CONCLUSION

The Commission should act in accordance with the recommendations proposed above by WorldCom.

Respectfully submitted,



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April 10, 1997

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[25] AT&T Petition at 12-13.

[26] AT&T Petition at 13; MCI Petition at 20-21.

CERTIFICATE OF SERVICE

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